

**ATTACHMENT A**  
**GOVERNMENT'S PROPOSED**  
**JURY INSTRUCTIONS**  
**FOR FORFEITURE TRIAL**

## **GOVERNMENT'S PROPOSED JURY INSTRUCTIONS FOR FORFEITURE TRIAL**

### **COURT'S FORFEITURE INSTRUCTION NO. \_\_\_\_**

#### **[Criminal Forfeiture Phase of Trial]**

Members Of The Jury: Your verdict in this case doesn't complete your jury service as it would in most cases because there is another matter you must now consider.

You must decide whether the Defendants should forfeit property to the United States as part of the penalty for the crimes charged in [Counts of Conviction] of the First Superseding Indictment.

In a portion of the First Superseding Indictment not previously discussed or disclosed to you, it is alleged that the Defendants acquired or maintained property from committing the offenses charged. In view of your verdict finding the Defendants guilty of those offenses, you must also decide whether the property should be forfeited to the United States.

To "forfeit" a thing is to be divested or deprived of the ownership of it as a part of the punishment allowed by the law for certain criminal offenses.

To decide whether the Property should be forfeited, you should consider all the evidence you have already heard plus any additional evidence that will be presented to you after these instructions.

A copy of the forfeiture allegations of the First Superseding Indictment and the Bills of Particulars will be given to you to consider during your supplemental deliberations. They describe in particular the property allegedly subject to forfeiture to the United States.

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**[Forfeiture Proceeding Follows Guilty Verdict]**

While deliberating concerning the issue of forfeiture, you must not reexamine your previous determination regarding the Defendant [CONVICTED DEFENDANTS'] guilt. However, all the instructions previously given to you concerning duties of the jury, your consideration of the evidence, what is and is not evidence, the credibility of the witnesses, expert testimony, your duty to deliberate together, your duty to base your verdict solely on the evidence without prejudice, bias, or sympathy, and the necessity of a unanimous verdict, will continue to apply during these supplemental deliberations. The specific instructions I gave you earlier concerning [Counts of Conviction], and the definitions, including the definitions of the "enterprise" and "pattern of racketeering activity," also continue to apply.

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**[Property Subject to Forfeiture for RICO Conviction]**

The law requires the forfeiture of interests to remove the sources of a defendant's power over the enterprise. Under this section, any property interest or position of the defendant, either directly or indirectly part of the enterprise, but which allows the defendant to exert control or influence over the enterprise, may be forfeitable. The government's right of forfeiture includes defendant's entire interest in the enterprise, even though some part of the enterprise may not be tainted by racketeering activity.

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**[Scope of Jury's Determination]**

Your duty at this phase of the proceeding is solely to determine whether the government has proven the required connection between the property sought for forfeiture and the offense(s) for which you have found the Defendants guilty. You should not consider what might happen to the property in determining whether the property is subject to forfeiture; the disposition of any property that is declared forfeited is exclusively a matter for the Court to decide. Similarly, if any property has been transferred to a third party, the Court will later determine the right of that third party to the property.

Some of the property that the government claims is subject to forfeiture may be in the name of the Defendants and persons or business entities other than the Defendants. However, any interest that a person other than the Defendants may claim to such property will be taken into account by this Court in a separate proceeding. Interests of persons or entities other than the Defendants are not for your consideration. Your sole task is to decide whether the Defendants' interest in the property, whatever that interest may be, is subject to forfeiture under the racketeering law.

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**[Property Sought For Forfeiture]**

The government seeks to forfeit the following property pursuant to the findings of guilt on each of [Counts of Conviction]:

1. Motorcycles seized by state, local or federal law enforcement agencies, and are currently in the custody of the United States.
2. All weapons, body armor, firearms and ammunition seized by state, local or federal law enforcement agencies, and are currently in the custody of the United States.

If you conclude that the government has proved by a preponderance of the evidence that any of the property listed above has a connection to the offenses of conviction on one or more of these grounds, you must find that such property is forfeitable to the United States.

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**[Property Acquired or Maintained in Violation of RICO]**

Property is “acquired” in violation of the RICO Act if the Defendants came to own it as a result of the conduct of which it has been found guilty in [Counts of Conviction], or if they paid for the property with proceeds of the illegal conduct. Property is “maintained” in violation of the RICO Act if the Defendants keep it by committing the criminal acts alleged in [Counts of Conviction], or they used proceeds of the illegal acts to keep it.

The government's right of forfeiture includes the entirety of property interests and proceeds which were acquired or maintained by the Defendants as a result of a pattern of racketeering activity. If the Defendants bought the property with proceeds of illegal activity, the property is forfeitable, even if it was never used in connection with any subsequent illegal activity. The government's right of forfeiture is not limited to what property or proceeds are left over or unspent now, at the time of conviction. Finally, the property interest is acquired or maintained if the proceeds from racketeering activity provided all or some substantial and significant part of the moneys used to acquire or maintain the interest.

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**[Property Affording an Interest]**

Property is an “interest” in an enterprise if it is property which carries with it some right of ownership in the enterprise.

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**[Property Affording a Source of Influence Over the Enterprise]**

Any property that the Defendants use to promote or further the affairs of the enterprise, affords a source of influence over the enterprise and is, therefore, subject to forfeiture.

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**[Property Constituting Proceeds of the Enterprise]**

Property constitutes “proceeds” or is “derived from proceeds” of the violation of the RICO statute if it represents assets acquired as a result of the illegal conduct, or assets acquired with the proceeds of the illegal conduct. A property interest represents the proceeds of the RICO violation when the proceeds derived from racketeering activity were the source of the funds, directly or indirectly, used to acquire or to maintain that property interest. In other words, the “proceeds” from a RICO violation include both the money derived from the RICO violation and any object or property later purchased or maintained with the money.

As used in these instructions, “proceeds” means gross proceeds; in other words, all sums obtained from the illegal activity, without regard to any overhead expenses that the Defendants may have paid in order to obtain these sums.

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**[Standard of Proof]**

With two important exceptions, all of my previous instructions will continue to apply to these deliberations. The first exception is that during this phase, the government's burden is not proof beyond a reasonable doubt, but instead is only proof by a preponderance of the evidence, which I will define for you in a moment. The second exception is that during this phase, you will consider a component of the potential punishment to be imposed on the Defendants, but your sole task is to determine whether the government has established, by a preponderance of the evidence, the required connection between the crimes of which the Defendants have been convicted and the property sought for forfeiture.

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**[Preponderance of the Evidence]**

When a party has the burden of proof on any claim by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim is more probably true than not true. You should base your decision on all of the evidence, regardless of which party presented it.

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**[Reliance on Evidence Presented During Guilt Phase]**

In making the forfeiture determination, you should consider all of the evidence presented during this post-verdict proceeding and the trial, regardless of who offered it. You should evaluate the evidence and its credibility according to the instructions I gave you earlier.

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**[Special Verdict Form]**

A Special Verdict Form has been prepared for your use. With respect to each piece of property listed or described, you are asked to decide whether it is subject to forfeiture to the government based on the reasons I have explained to you. You will see that the special verdict form asks you to consider separately whether each piece of property is forfeitable as a result of each specific count of conviction. The same property can be forfeitable for more than one reason. You must indicate on the special verdict form every reason for which you find a given property forfeitable. The Court will consider any issue relating to double counting during sentencing. Your decision must be unanimous. Indicate on the verdict form whether you find that the property listed is subject to forfeiture, and then the foreperson should sign and date the form.